THE LAW

TRIALS

The Ruby Circus

In theory, the adversary system on which U.S. trials are built is a legal contest with one overriding purpose: to discover the truth. In fact, outside pressures often change the courtroom controversy into a lawyers' scramble for headlines. And when that happens, the search for truth may be sadly neglected. This is the disturbing conclusion of *The Trial of Jack Ruby* (Macmillan; $7.95), by Professors John Kaplan and Jon R. Waltz of Stanford and Northwestern universities, a deft and readable analysis that depicts a legal disaster—a world-watched trial in which the defendant drew the ultimate sentence of death while his lawyers were busy boosting their own egos.

DON UNRROCK

DEFENDANT RUBY

SHEL HERSHORN—BLACK STAR

JUDGE BROWN

The sole issue was never resolved.

Harvesting Hostility. It is particularly ironic, say the authors, that Ruby's first lawyer, Tom Howard of Dallas, mapped the one strategy that District Attorney Henry M. Wade feared most: the plausible defense that Ruby shot Lee Oswald while "under the influence of a sudden passion arising from an adequate cause." Howard wanted the jury to view Ruby's crime as murder without malice, which in Texas carries a maximum sentence of five years.

But Ruby's case was taken over by San Francisco's Melvin Belli, a lawyer avid to make history, who demanded total acquittal on grounds of insanity. Like some 25 other states, say the authors, Texas requires the defense to prove that an allegedly insane defendant did not know right from wrong at the time of his crime. Undaunted, Belli insisted that Ruby shot Oswald as the result of an extremely rare epileptic seizure called a "psychomotor variant."

As Authors Waltz and Kaplan tell it Belli's next mistake was to assume that Judge Joe B. Brown would repress his own "passion for the limelight" and let the trial be moved out of Dallas—a false hope that spurred the Californian to insult scores of prospective Texas jurors by making repeated attacks on Dallas as a "city of shame."

While the ineffable Judge Brown made good use of "a green cuspidor strategically located by his left foot," he rejected virtually every defense objection, say the authors. D.A. Wade successfully introduced Ruby's apparently sane statements after the shooting ("I hope I killed the son of a bitch"), including one that indicated premeditation ("I first planned to kill him at the Friday night press conference"). All of which Belli was forced to explain as "confabulation," by which he meant that the statements were Ruby's effort to rationalize his alleged blackout when he pulled the trigger. Already skeptical, the jury was singularly unimpressed when Belli displayed yards of inscrutable electroencephalograms purporting to show the organic brain damage that caused Ruby's epileptic seizure.

Worse, Belli's diagnosis was knocked down by his own star witness, Dr. Manfred Guttmacher, the veteran psychiatrist of Baltimore's criminal courts. Even though Guttmacher offered the far more plausible diagnosis of episodic psychosis, Belli refused to abandon his pet theory—which five prosecution medical witnesses then tore to shreds. Not surprisingly, one assistant prosecutor felt free to play the defense for laughs: "I wonder if they got their psychomotor variant from the psychomotor pool."

Squalid Aftermath. The authors give high marks to Henry Wade as a trial tactician, even though they argue that he introduced improper evidence. By contrast, they note that Belli failed even to try to talk the jury out of the death penalty.

In the squalid aftermath, five other lawyers have since flitted in and out of the case, trading mutual insults through a blizzard of appeals. Equally "grotesque," say Kaplan and Waltz, was last winter's revelation that Judge Brown was not only writing a book on the case, which he was about to confront again in the form of a new hearing on Ruby's current sanity, but that he had sent a letter to his New York publisher proposing that he announce publicly: "I have not begun to write a book." It was that disclosure, the authors suggest, that forced Judge Brown finally to disqualify himself from the sanity hearing, which has been postponed ever since.

Jack Ruby's case may drag on for years. Whatever the outcome, his trial left Authors Kaplan and Waltz with grave doubts about the sole issue in question—whether he was indeed insane when he committed murder before 80 million TV witnesses. What was confirmed was that a highly publicized U.S. trial is more than likely to become a circus. And what is worse, that even an unpublicized U.S. trial metes out justice largely to the extent that the lawyers on both sides have equal skill—and equal luck.

CONSTITUTIONAL LAW

California Conundrum

Californians who voted 2 to 1 last year for Proposition 14—a constitutional amendment voiding state laws against housing discrimination—set the stage for an inevitable and important quarrel in the courts. Now called Section 26 of the California constitution, the amendment states in its key passage:

"Neither the State nor any subdivision or agency thereof shall deny, limit or abridge, directly or indirectly the right of any person, who is willing or desirous to sell, lease or rent any part or all of his real property, to decline to sell, lease or rent such property to such person or persons as he, in his absolute discretion, chooses."

Its proponents claim that the amendment leaves California, like 32 other states, "neutral" in private real estate dealings. Negroes angrily charge that Section 26 amounts to state-enforced racial discrimination. Thus far Negroes testing Section 26 have lost a series of lower state court cases.

Last week the argument reached the California Supreme Court in Los An-